

CREATING DEMAND FOR REFORMS BEYOND EU CONDITIONALITY – CIVIL SOCIETY AND PUBLIC ADMINISTRATION REFORM IN THE WESTERN BALKANS

**This paper was submitted to the call for papers on “What if the Balkans Never becomes Part of the EU?” and presented at the Belgrade Security Forum 2017*

Milena Lazarević, Sena Marić and Miloš Djindjić¹

Belgrade, August 2017

Summary

Western Balkan countries have committed to challenging public administration reforms (PAR), in their pursuit of the EU membership. These reforms, paramount for the citizens of these countries, are mainly driven externally through the EU conditionality, as the fundamental before joining the Union. At the same time, these countries have been facing prolonged promise of becoming members, followed with increasing PAR conditionality yet lack of enlargement proactivity owing to the challenges the EU is facing internally. This in turn underpins democratic backsliding tendencies and antagonistic agendas. What if enlargement enthusiasm continues to dissipate, EU membership prospects become even bleaker, resulting in weakening of the effects of EU’s external conditionality? In this paper, authors argue that in the event of (indefinite) delay of the EU accession, civil society in WB should take over the role in demanding national and local PAR reforms, continuing the pressure currently exercised by the EU conditionality through the Principles of Public Administration. Although active in monitoring different PAR areas in WB, increased civil society’s role is crucial in maintaining pressure for reforms, as only by increasing relevance and participation of local actors; can these inconvenient yet essential administrative reforms be achieved for the benefit of citizens, even without the EU accession prospects?

I. External Governance as a Push Factor for Reform

Western Balkan (WB) countries have committed themselves to challenging public administration reforms (PAR), in their pursuit of the EU membership. These reforms are mainly driven externally through the EU conditionality, which has become far more complex especially since 2014, when PAR was defined as one

¹ Milena Lazarević is Programme Director; Sena Marić is Europe&us Programme Manager; Miloš Djindjić is Good Governance Programme Manager in the European Policy Centre, Belgrade

of the three “fundamentals” in the accession process.² While the entire accession process for the WB has evolved into a much more time-consuming and demanding exercise compared to the previous enlargement rounds, credibility of the EU membership perspective has shrunk considerably. The existing literature unequivocally points to the gradual erosion of credibility of EU enlargement policy since the failed initiative to introduce EU Constitution in 2005, which culminated in the 2014 announcement of no-enlargement during the mandate of the incumbent European Commission.³

Previous studies on EU governance through external conditionality suggest that the main incentive for a candidate country to adhere to the EU requests is the clear prospect of membership combined with accession conditionality.⁴ Following this argument, in the absence of such a prospect, the quality and sustainability of the required reforms can be brought into question due to lack of incentives, despite the employment of more sophisticated assessment and monitoring measures, which were introduced exactly to prevent reversibility of achieved reforms that has taken place in several CEE countries when it comes to PAR.⁵ In fact, a growing number of authors claim that one of the consequences of uncertain membership perspective has been the rise of democratic regression tendencies across the region, arguing that the EU approximation of the candidate countries has become unrelated to the democratization process of these countries.⁶ Similar tendencies have also been noted in several of the EU's countries that became members in 2004, which raises the question of (un)realistic expectations from the EU to bring about lasting democratic change.⁷

The present circumstances represent a major challenge for effective PAR in the countries of the region. While the EU's more calibrated approach to PAR is commendable and certainly goes in favour of the WB citizens, concerns over the “membership carrot” incentive and EU's ability to induce overarching

² The EU's Enlargement Strategy from 2014 defined rule of law, public administration reform and economic governance as three “pillars” of the enlargement process. See EU Enlargement Strategy and Main Challenges 2014-15, p.3, available at: http://www.ab.gov.tr/files/000etkinlikler/2014_enlargement_strategy_paper.pdf

³ For example, Kochenov, D. (2008) ‘EU Enlargement and the Failure of Conditionality: Pre-accession Conditionality in the Fields of Democracy and the Rule of Law’, Kluwer Law International, 59; O'Brennan, John (2014) ‘On the Slow Train to Nowhere?’ The European Union, ‘Enlargement Fatigue’ and the Western Balkans. *European Foreign Affairs Review*, 19 (2). pp. 221-242; Oliver Schwarz, Two steps forward one step back: what shapes the process of EU enlargement in South-Eastern Europe?, *Journal of European Integration*, 2016; H. Grabbe, Six Lessons of Enlargement Ten Years On: The EU's Transformative Power in Retrospect and Prospect, *Journal of Common Market Studies*, Volume 52, Issue S1, September 2014, pp. 40–56; M. Vachuhova, EU Leverage and National Interests in the Balkans: The Puzzles of Enlargement Ten Years On, *Journal of Common Market Studies*, Volume 54, January 2014. s

⁴ Schimmelfennig, F. and Sedelmeier, U. (Eds.) (2005) *Europeanization of Central and Eastern Europe*, Cornell University Press, p.221.

⁵ Meyer-Sahling, J. (2009), “Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years After EU Accession,” *SIGMA Papers*, No. 44, OECD Publishing, p. 9; Dimitrova, A. (2007), “Institutionalisation of Imported Rules in the European Union's New Member States: Bringing Politics back into the Research Agenda,” *EUI Florence*; Meyer-Sahling, J. (2006), “De-Politicisation Through the Backdoor? EU Integration, Administrative Reform and Party Patronage in East Central Europe,” p. 24.

⁶ Biepag. (2017) “The Crisis of Democracy in the Western Balkans. Authoritarianism and EU Stabilitocracy”, available at: <http://www.biepag.eu/wp-content/uploads/2017/03/BIEPAG-The-Crisis-of-Democracy-in-the-Western-Balkans.-Authoritarianism-and-EU-Stabilitocracy-web.pdf>

⁷ Wunsch, Natasha. (2017) “Europeanisation and democratic regression in southeast Europe: shifting paradigms, new questions”, 28 March, available at: <http://www.suedosteuropa.uni-graz.at/blog/index.php/2017/03/28/europeanisation-and-democratic-regression-in-southeast-europe-shifting-paradigms-new-questions/>

democratic reforms threaten to endanger the existing efforts. Indeed, in the course of the current process of enlargement to the WB, external actors, most notably the EU, profiled themselves as the main source of pressure for reforms. The internal demand in the candidate countries, emanated in the civil society, has been vocal, but only partially successful.⁸

Overall, it has been argued that the Commission's approach to the WB is quite consistent with that employed during the CEE enlargement insofar as "top-down" approach was adopted in both cases, preferring state actors over horizontal and less hierarchical structures when having to engage in communication and decision-making processes.⁹ This paper makes the case for a "bottom-up" approach in creating pressure for effective and sustainable PAR. It argues that the EU's approach to the civil society of the WB countries is not sufficient to induce long-lasting reforms based on inclusiveness, transparency and evidence. In this paper, the authors suggest that ensuring sustainability of reforms is indispensable irrespective of EU conditionality requirements: both in the post-accession phase, in case the WB countries achieve EU membership, as well as in case of slowed down or suspended accession process.

II. "Strong" Civil Society: Evolution and Limitations of EU's External Conditionality

In the absence of a credible membership perspective for the Western Balkans, the EU found a fractional compensation by developing "policy conditionality", which has so far been effective only in the case of visa liberalisation policy that took place between 2008 and 2010. Such approach has turned into success since the EU managed to make conditionality more substantive and to establish a more tangible relationship between demand and reward.¹⁰ However, the achieved success and the implemented strategy has meagre replication potential in the development of robust civil society as one of major actors for effective PAR, given the horizontal nature of this issue and numerous limitations of the EU's strategy towards the civil society sector that will be discussed onwards.

When it comes to the involvement of the civil society from the Western Balkans in the accession process, the EU has so far refused to offer any kind of "prescriptive model" to the candidate countries, given the absence of shared standards among the member states.¹¹ The approach of the European Commission has shifted from an initial focus on internal capacity building, to placing emphasis on creating an enabling environment for CSOs, to finally tackling state-civil society relations.¹²

⁸ S. Maric et al., *Policymaking in the Western Balkans: Creating Demand for Evidence Beyond EU Conditionality*, p.8.

⁹ O'Brennan J. (2013) The European Commission, Enlargement Policy and Civil Society in the Western Balkans. In: Bojicic-Dzelilovic V., Ker-Lindsay J., Kostovicova D. (eds) *Civil Society and Transitions in the Western Balkans. New Perspectives on South-East Europe Series*. Palgrave Macmillan, London, p.30.

¹⁰ F. Trauner, From membership conditionality to policy conditionality: EU external governance in South Eastern Europe, *Journal of European Public Policy*, Volume 16, 2009 - Issue 5.

¹¹ Wunsch, Natasha. (2015) "Beyond instrumentalisation: NGO monitoring coalitions in Croatia, Montenegro, and Serbia", *East European Politics*, 31:4, 452-467, p. 453.

¹² N. Wunch, *Right Goals, Wrong Tools? Civil Society Empowerment in the EU Accession Process*, DGAPanalyse, February 2015, p.5, available at: <https://dgap.org/en/article/getFullPDF/26439>

In 2007 the EC identified for the first time civil society development and civil society dialogue as a core priority of the enlargement process in the Western Balkans and announced setting up of a Civil Society Facility (CSF) to support CSOs, introduced into the operating framework of the Instrument for Pre-Accession (IPA).¹³ Beginning with Croatia and Turkey in 2005, and extending it to the whole of the WB in 2006, the EU began to not only support increased communication and cooperation between EU member states and the candidate countries, but it also began paying much more attention to the role of civil society in the democratisation and reconciliation process taking place within these countries. The EU's internal crises, from the failed referenda on the EU founding treaties in France, the Netherlands and Ireland, financial crisis, etc., made it rethink about its approach to the civil society in the context of hierarchical EU decision-making process.¹⁴ Furthermore, the revolts in the Arab world and Occupy movements influenced the EU's renewed perspective on the CSOs as these events highlighted "the potential of social and cultural movements as agents for change", as well as the important role of the Internet and social media platforms in driving this change.¹⁵

EU's Enlargement Strategy 2014-15 introduced the "fundamentals first" principle and referred numerously to the necessity to build "strong", "empowered" and "enabling environment" for the civil society.¹⁶ With the introduction of more comparative and transparent style of reporting in 2015, the EC wanted to promote a stronger role for the CSOs and greater accountability.¹⁷ At the same time, the EU has raised its expectations from the civil society in the WB, most notably in terms of their contribution to enhance political accountability and promote "deeper understanding of accession related reforms".¹⁸ Accordingly, the CSF support to the WB has increased over time, making the EC the biggest financial supporter of civil society in the WB region.¹⁹

¹³ EU Enlargement Strategy and Main Challenges 2007-08, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2007/nov/strategy_paper_en.pdf

¹⁴ Wunsch, *Right Goals, Wrong Tools? Civil Society Empowerment in the EU Accession Process*, op.cit., p.8.

¹⁵ European Commission (2012) The roots of democracy and sustainable development: Europe's engagement with Civil Society in external relations, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, pp.3-4, [Online] 12-09-2012 [Accessed 16-08-2017] http://civilnodrustvo.gov.rs/upload/old_site/2012/10/EU-Communication-Engagement-with-civil-society-September-2012.pdf

¹⁶ European Commission, Enlargement Strategy and Main Challenges 2014-15, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-strategy-paper_en.pdf

¹⁷ Dimitrova, Antoaneta L.: The EU's Evolving Enlargement Strategies: Does Tougher Conditionality Open the Door for Further Enlargement?, No. 30, July 2016, "Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond" (MAXCAP), p.11.

¹⁸ European Commission, Enlargement Strategy 2015-20, p.5, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_strategy_paper_en.pdf

¹⁹ For the 2005-2007 period €27 million were provided and €79 million for the 2008-2010 period. In: O'Brennan, op.cit., p. 11. Overall, in the 2007-2013 period, CSOs have been supported by almost €190 million from IPA, as well as by over €35 million from the European Instrument for Democracy and Human Rights. The rise in allocation of resources is also observed in 2014-20 multi-financial framework. The CSF allocations for the 2014-2015 period amounted €68,7 million, whereas the ones for 2016-2017 for WB and Turkey increased by 27% compared to 2014-2015, see: European commission (2013) Enlargement Strategy and Main Challenges 2013-2014, *Communication from the Commission to the European Parliament and the Council*, p.9, [Online] 16-10-2013 [Accessed 16-08-2017] https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2013/package/strategy_paper_2013_en.pdf, and European Commission (2016) Implementing decision of 20.7.2016 adopting a civil society facility and media programme for the years 2016-2017 under the

In 2016, it could be noticed that the EC's assessments on the state of play in the WB countries have for the first time acknowledged the trade-off between the short *acquis* alignment-related deadlines imposed by the EU association/accession process and the quality of the enacted regulation as a major problem. By placing greater pressure on public participation in the policymaking, the Commission seems to have learned from previous experiences, as it has modified its approach and started paying greater attention to the conditions for more substantive involvement of the civil society and the third parties in the region in the policymaking process.²⁰

The EU's greater insistence on state-CSO cooperation has brought a number of positive developments in Serbia. In 2014 the National Convention on the European Union was established, which represents a comprehensive forum for participation of the CSOs and professional associations in monitoring the EU accession process. The Government's Office for Cooperation with the Civil Society had an important role in mobilizing the cooperation between the two sectors and organising numerous capacity building activities. Illustrative case studies that demonstrate the evolution of the state-civic cooperation are preparatory actions for opening and monitoring of Chapters 23 and 24, given their importance and complexity in the accession process. Namely, during the preparatory work for the adoption of the respective Action Plans, civil society organisations could follow the screening process livestream from Belgrade; take part in lectures and trainings aimed at improving their knowledge on the substance of the two chapters and negotiating process; provide comments on the draft documents and receive feedback; and finally, have their suggestions incorporated in the final two versions of the documents. Ever since the two chapters were open in 2016, CSOs gathered in the National Convention meet regularly with the responsible representatives of the two ministries in charge of the two chapters, in order to discuss progress and missing information in reporting on the achieved results. Similar patterns of activities have been carried out in other chapters of accession negotiations that have so far been on the agenda, as civil servants from the responsible ministries regularly respond and participate in the National Convention on the EU (NCEU) meetings organised by the more active working groups (political-level participation has been less praiseworthy).

However, such positive practices have so far been mainly limited to the framework of the EU accession process.²¹ It is questionable whether the state stakeholders would have such interest in engaging with the civil society if the EU conditionality did not exist. Despite the substantive shift in the relations between the two sectors, the overall impression prevails that most state stakeholders still see these interactions as

instrument for pre-accession assistance, pp.3-4, [Online] 20-07-2016 [Accessed 16-08-2017] https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/financial_assistance/ipa/2016/ipa_ii_2016-038-960_2017-038-96_civil_society_facility_and_media_programme.pdf

²⁰ S. Maric et al., *op.cit.*, p.7.

²¹ A noteworthy exception, which falls outside of the scope of the EU accession process *stricto sensu*, is the coordination of public administration reform, where CSOs have been involved in both the development of the policy and in its coordination and monitoring – the latter via their inclusion as members of the Inter-ministerial Working Group for PAR Strategy Implementation. This trend has been praised by the European Commission and is likely to be continued in the future. Yet, there is a prevailing feeling that the strong focus of the EC on PAR in the last few years has in fact contributed to the improved CSO participation in this policy.

imposed, rather than mutually reinforcing and beneficial.²² Furthermore, the general atmosphere for CSO engagement has been increasingly turning into hostile, with growing number of attacks made by the pro-Government media and government officials towards the CSOs that criticise the current government, among which investigative journalism organisations have been the most vulnerable.²³ Similar trends have been observed in Montenegro and Macedonia.²⁴

At the same time, the EU's growing financial support and rhetorical endorsement to the CSOs in the region have not led to substantially increased resilience and sustainability of this sector, although its share in support to civil society has been the largest compared to other donors. The general donor support, including the EU, is largely project-based and forces the organisations to devote considerable time and human resources to demanding project application procedures, which results in increasing alienation between the CSOs and their constituencies.²⁵ As noted by TACSO, a conspicuous weakness across the region is still the low number of CSOs promoting good governance, particularly the ones focusing on oversight of public administration.²⁶ CSO sector in the countries of the region generally suffer from weak analytical capacities and potential to advocate towards the decision-makers.²⁷

III. From “Top-Down” to “Bottom-Up” Approach: The Case of Regional PAR Monitoring by the CSOs in the WB

An alternative to the “top-down” external conditionality approach can be found in locally-driven advocacy initiatives for keeping the pace of PAR agenda in the WB region. The baseline assumption of this approach to PAR advocacy and monitoring is that it relies on the local actors from the civil society - CSOs, with sufficient capacities and knowledge to tackle the complexities and comprehensiveness of PAR processes in countries of the region. As indicated previously, the EU contributions to the empowerment of the CSOs have been purposefully increased over the years for enabling local actors to start exercising influence on policy making in their respective countries more strongly. Yet, the involvement in PAR monitoring and advocacy requires skillsets and knowledge not necessarily built through the isolated project efforts. Rather, those are to be built through the experience exchange and learning within civil society both at the national and at the WB level.

The value of the locally-driven approach stretches beyond the EU accession prospect. Namely, although it can serve as the additional push towards the EU accession goal, it ultimately serves as the driver for better

²² Interviews with the coordinators of the working groups for Chapters 23 and 24 of the National Convention, July 2017.

²³ B. Elek et al., *Monitoring and Evaluation of the Rule of Law of the Republic of Serbia*, Belgrade Centre for Security Policy, November 2016, p.10.

²⁴ *Back to Basics: Re-affirming the Rule of Law in the Western Balkans*, Institute Alternative, December 2016, p.19.

²⁵ N. Wunch, *Right Goals, Wrong Tools? Civil Society Empowerment in the EU Accession Process*, DGAPanalyse, February 2015, p.4, available at: <https://dgap.org/en/article/getFullPDF/26439>

²⁶ *Civil Society Organisations' Capacities in The Western Balkans And Turkey: A Comparative Summary of The Eight Country - CSO Needs Assessments*. A Report Issued by TACSO (Technical Assistance to Civil Society Organisations in the IPA countries), October 2010, Available at: http://www.tacso.org/doc/Report_CS0_Capacities.pdf

²⁷ S.Maric et al., *op.cit.*, p.8.

governance and well-functioning public administration, able to provide fair and transparent administrative handling and high-quality services, even if EU conditionality dissipates or ceases to exist. Moreover, the EU conditionality applied to all countries aspiring to become member states already provides a common ground, a springboard for CSOs in the WB to embark on creating regional pressure on governments for more effective, citizen-oriented PAR. What is more, creation of a network of local civil society actors from the WB, can yield mutually reinforcing regional effects on governments in the long run.²⁸

The difference, however, from the external monitoring under the EU conditionality is that locally-driven approach focuses not only on the need for countries to build strong administration in order to “effectively transpose and implement the EU *acquis*.”²⁹ The emphasis is put on domestic needs for effective administration and demand for reform with the rationale that only by empowering local non-governmental actors and strengthening participatory democracy at the national and local level, can the same pressure on the governments in the WB to continue implementing PAR be maintained post-accession.

The *legitimacy* behind the involvement of local non-governmental actors in external PAR monitoring is manifold. Citizens are the ultimate PAR beneficiaries - as the users of the services provided by the administrations or financiers of PAR as taxpayers. CSOs, as groups of citizens, can represent different individual and group interests and needs. Notwithstanding, the *credibility* of CSOs in PAR monitoring pertains to another aspect of involvement, which is provision of independent data and observations on the reform results (i.e. the role of civil society as a control mechanism for government). To exemplify, the regional PAR monitoring by the civil society done through the WeBER project relies on the SIGMA *Principles of Public Administration* as the pool of standards for monitoring PAR in the accession countries in the six areas of PAR.³⁰ Justification is twofold: firstly, the Principles represent the only common denominator for PAR in all WB countries, allowing for country comparisons, learning from experience and peer pressure; secondly, they represent the normative framework for PAR for the alignment with the EU standards and requirements and support transformation of WB countries into future member states.

Further on, in order to successfully and credibly advocate towards national authorities in WB countries, the regional PAR monitoring by the civil society should be *based on evidence and supported in analysis*. In the case presented, monitoring is supported by local research and knowledge produced by the CSOs and the development of own methodological framework for monitoring SIGMA Principles. Accordingly, it does not copy or duplicate SIGMA monitoring but provides complementary insight into PAR processes based on

²⁸ The case in point is the approach of the WeBER regional project, which aims to increase the relevance, participation and capacity of local civil society in the WB to advocate for and influence the design and implementation of PAR. Originating from the civil society, WeBER focuses on the *external PAR monitoring* in the WB. WeBER is a three-year project funded by the European Union and co-financed by the Kingdom of the Netherlands, and implemented by six think tank organisations from the Western Balkans. See more about WeBER: <http://www.par-monitor.org/pages/about-weber>

²⁹ The Principles of Public Administration, SIGMA/OECD, 2017, p. 6. Available at: http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf

³⁰ The Principles of Public Administration have been developed by SIGMA in close cooperation with the European Commission to define detailed requirements for a well-functioning public administration in six core areas: 1) Strategic Framework for PAR, 2) Policy Development and Coordination, 3) Public Service and Human Resource Management, 4) Accountability, 5) Service Delivery, and 6) Public Financial Management. SIGMA is a joint initiative of the OECD and the EU, principally funded by the EU. For more, visit: <http://www.sigmaweb.org/>.

complementary research and data collection techniques.³¹ Essentially, the independent civil society-made monitoring methodology, together with the knowledge accumulated in the civil society of the WB used as the source of evidence and information; result in a monitoring approach devised *for the civil society and by the civil society*.

IV. Conclusion: Way Forward for Locally-Induced PAR in WB

Given the previous experience and limitations of EU's approach to CSOs to the region, a system built on locally-driven incentives for reform has numerous mutually reinforcing and complementary benefits that could be replicated in other policy areas based on the PAR example. Before the EU integration process is completed, but even in the eventuality of these countries never becoming EU members, civil society will develop own complementary findings and measurements of success in PAR, embedded in the EU "standards" in this area. The present period should be used to build the knowledge, tools and other capacities in the WB civil society for monitoring activities, using peer learning and knowledge sharing. After joining the EU, or even in the case of unending accession process or loss of membership perspective, CSOs would continue to externally monitor PAR in a comprehensive manner based on previously inherited knowledge and experience, maintaining the pressure and momentum for continuation of reforms.

One may argue that, even if the WB never becomes part of the EU, the citizens of the region will still wish their countries to abide by EU standards in different policy areas, including PAR. Therefore, a strengthened civil society, "armed" with research skills and independent monitoring mechanisms, will be much better placed to continue to press for the EU-compliant reforms to continue, thus "filling the void" left by weakened or no-longer-existent EU conditionality. At the same time, one can also reasonably expect that, even if the EU accession perspective is lost for some or all WB countries, the EU will still keep a strong interest in the region and will continue to support the reforms – and perhaps even more so than nowadays – the role of civil society in inducing societal and governance change.

In either scenario, equipping local actors with the necessary skills, and raising their awareness to demand high-quality (and EU-compliant) reforms has the potential to substitute external policy conditionality. The EU demands could serve as the starting point or common framework of reference. Nevertheless, the results of the reforms – whether positive or negative – will eventually be felt at home and will thus remain equally crucial for domestic civil society, irrespective of the EU accession outcomes.

³¹ See the draft methodology for PAR monitoring by the civil society produced within WeBER: <http://www.par-monitor.org/pages/par-monitor-methodology>.